

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1(b) BUTLER SNOW LLP Paul S. Murphy P. O. Drawer 4248 Gulfport, MS 39502 Telephone: (228) 575-3033 paul.murphy@butlersnow.com Martin A. Sosland (<i>pro hac vice</i> pending) Candice M. Carson (<i>pro hac vice</i> pending) 2911 Turtle Creek Blvd., Suite 1400 Dallas, Texas 75219 Telephone: (469) 680.5502 Martin.sosland@butlersnow.com Candice.carson@butlersnow.com <i>Counsel for Pittsburgh Hilton Head Associates L.P.</i>
In Re: BED BATH & BEYOND, INC., et al., <div style="text-align: right;">Debtors.</div>

Chapter 11

Case No. 23-13359(VF))

Honorable Vincent F. Papalia

**PITTSBURGH HILTON HEAD
ASSOCIATES L.P.’S LIMITED OBJECTION AND
RESERVATION OF RIGHTS TO DEBTORS’ CURE NOTICE**

Pittsburgh Hilton Head Associates L.P. (“PHHA”), by and through its undersigned counsel, files this limited objection (the “Objection”) to the above-captioned debtors’ and debtors’ in possession (collectively, the “Debtors”) *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (the “Cure Notice”) [Docket No. 714]. PHHA respectfully would show as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction to consider the Objection pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157(b)(1), and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.).

2. This matter is a core proceeding under 28 U.S.C. § 157(b).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. Prior to the commencement of these chapter 11 cases, Bed Bath & Beyond Inc. entered an agreement with PHHA to lease premises located at Hilton Head Villages, Bluffton, South Carolina (as amended, modified, and supplemented from time to time, the “Lease”) and executed certain related subordination and letter agreements with PHHA and certain third-parties.

5. On April 23, 2023 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code before this Court.

6. The Debtors continue to operate their business and manage their properties as debtor’s-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

7. On April 25, 2023, the Court entered the *Order (I)(A) Approving the Auction and Bidding Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Bid Deadlines and an Auction, (D) Approving the Form and Manner of Notice Thereof, (E) Approving the Form APA, and (II)(A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C) Authorizing the Sale of Assets and (D) Granting Related Relief* [Docket No. 92] (the “Bidding Procedures Order”).

8. The Lease is an unexpired lease of nonresidential real property in a shopping center pursuant to section 365(b)(3) of the Bankruptcy Code.

9. Pursuant to the Bidding Procedures Order, on June 13, 2023, the Debtors filed the Cure Notice, designating the Lease as one of the unexpired leases that may be assumed at a later date.

10. The Debtors assert that \$7,666.53 is the monetary cure amount for the Lease.

LIMITED OBJECTION

11. Pursuant to section 365(b) of the Bankruptcy Code, the Debtors may not assume the lease without, among other things, compensating PHHA for any actual pecuniary loss resulting from their default *at the time of assumption*. 11 U.S.C. § 365(b)(1). PHHA objects to the Cure Notice to the extent it fails to include any additional amounts that will become due under the Lease after June 14, 2023.

12. Additionally, pursuant to section 16.1.3 of the Lease, upon default the tenant is liable for all commercially reasonable fees and expenses, including attorney's fees, incurred by PHHA in enforcing and defending its rights under the Lease. PHHA objects to the Cure Notice to the extent it fails to include all reasonable attorneys' fees incurred prior to the effective date of assumption.

RESERVATION OF RIGHTS

13. If the Debtors seek to assume the Lease, PHHA reserves its rights to supplement this objection and to make any further objections pursuant to section 365 of the Bankruptcy Code as may be appropriate under the Lease, including with respect to the identity of the proposed counterparty or to the proposed adequate assurance of future performance.

WHEREFORE, PHHA requests this Court enter an order (a) sustaining the Objection, (b) finding that any order authorizing assumption of the Lease must require the Debtors to pay all amounts incurred through the effective date of the assumption, including reasonable attorneys' fees and expenses, and (c) granting any other further relief that the Court deems appropriate under the circumstances.

Dated: June 26, 2023

Respectfully submitted,

BUTLER SNOW LLP

/s/ Paul S. Murphy

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